



Signed and Filed: September 21, 2012

*Dennis Montali*

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re ) Bankruptcy Case  
BERTIN R. CHABOT, II, ) No. 10-32380DM  
Debtor. ) Chapter 11  
\_\_\_\_\_ )

MEMORANDUM DECISION ON MOTION TO VALUE

The parties have stipulated that the court may find the value of debtor's real property at 506 South Shoreline Drive, Mountain View, CA. (the "Property") without a trial or live testimony of their hired appraisers. While the court would have preferred hearing the appraisers respond to cross-examination and questions from the court, it will abide by the parties' wishes and decide the question. For the reasons stated below, the court finds that the value of the Property is \$425,000. Accordingly, Debtor is entitled to value the lien of JP Morgan Chase Bank, N.A. "Bank") at zero for purposes of his Chapter 11 Plan pursuant to the court's Guidelines for Valuing and Avoiding Liens in Individual Chapter 11 Cases and Chapter 13 Cases ("Guidelines").<sup>1</sup>

The Property is at best a run-down, small old cottage in an area where sales of what lay people not trained in appraisal

<sup>1</sup> The following discussion constitutes the court's findings of fact and conclusions of law. Fed. R. Bankr. P. 7052(a).

1 techniques would call comparable are in the one-half to three-  
2 quarter of a million dollars. In this context the two appraisers  
3 are themselves almost a quarter of a million dollars apart. How  
4 this can be regarding such a generic non-unique house is the  
5 problem the court confronts.

6 In general the debtor's appraisal by Peter M. Cella ("Cella")  
7 is more persuasive than Bank's appraisal by Kha C. Lam ("Lam").  
8 In fact the court has serious doubts about the reliability of  
9 Lam's analysis. First and foremost among the differences is the  
10 evaluation of the structural problems present at the Property and  
11 the adjustments made. The problems are described in detail by two  
12 of debtor's witnesses, Mr. Lefholz, a building contractor, and Mr.  
13 Burke, a home inspector. Mr. Lefholz found it questionable  
14 whether the structure could be saved.

15 It is hard to imagine how Lam could dismiss such conditions  
16 and make only modest adjustments to the comparables examined. For  
17 example, Lam grades the Property's Condition as C5, described in  
18 the Condition Ratings as in need of significant repairs with  
19 functional utility and overall livability somewhat impaired. By  
20 comparison, C3 refers to well-maintained improvements and  
21 structures and C4 describes property calling for some deferred  
22 maintenance with major components adequately maintained and  
23 functionally adequate. Given the significant differences in these  
24 narrative descriptions of a property's condition, and with  
25 specific reference to the sorry condition of the Property, for Lam  
26 to adjust Comparables 1, 3 and 5 - Condition C3 - by only \$10,000

1 is highly questionable. The same is so with reference to  
2 Comparables 2, 6 and 7 - Condition C4 - where there is only a  
3 \$5,000 downward adjustment. This might have been explained had  
4 Lam testified.

5       Given the condition of the Property the court questions Lam's  
6 description of the exterior foundation walls as "fair" and the  
7 notation of only the existence of a crawl space in the portion of  
8 the appraisal describing the foundation. In that same box there  
9 is nothing marked about evidence of infestation, dampness or  
10 settlement whereas Cella notes dry rot and Mr. Burke notes  
11 cracking and separation of the foundation.

12       Cella adjusts the comparables by \$250,000 across the board  
13 and this seems far more in line with the real situation at the  
14 Property. But even Cella's conclusions raise some questions. For  
15 example, it is not clear why he adjusted downward \$125,000 when  
16 considering Condition of the Property as Poor and Comparable 1 as  
17 Good-Average, but then adjusting Comparables 2, 3 and 4 - Average  
18 - Good - by only \$100,000. This might have been readily explained  
19 had Cella testified.

20       After reflecting on the totality of both appraisals,  
21 considering especially the substantial expenditures necessary to  
22 restore the Property to more acceptable conditions, but  
23 recognizing that debtor has utilized the Property for his business  
24 and for rentals in the past, the court rejects the bottom-line  
25 tear down Cella valuation of \$375,000 and finds the Property worth  
26 at least \$425,000. Accordingly, debtor is entitled to value

1 Bank's lien at zero for purposes of his Chapter 11 plan.

2 Counsel for debtor should serve and upload an order in a form  
3 consistent with Appendix A to the Guidelines, with specific  
4 reference to this Memorandum Decision (rather than any actual  
5 hearing), valuing the Property as indicated above.

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7 \* \* \* END OF MEMORANDUM DECISION \* \* \*

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